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FA-377-2020

IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE GAJENDRA SINGH

FIRST APPEAL No. 377 of 2020



Versus



Appearance:

Shri Chandrakant Verma, learned counsel for the appellant.

Shri Aditya Verma, learned counsel for the respondent.

WITH

FIRST APPEAL No. 388 of 2020



Versus



Appearance:

Shri Chandrakant Verma, learned counsel for the appellant.

Shri Aditya Verma, learned counsel for the respondent.

Reserved on 01.03.2025

Delivered on 06.03.2025

J U D G M E N T

Per Justice Gajendra Singh:



First Appeal No.377/2020 is preferred by the wife/appellant being aggrieved by the judgment and decree dated 11.02.2020 in RCSHM No.62/2016 whereby the petition for divorce on the ground of cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955 has been rejected and First Appeal No.388/2020 is preferred being aggrieved by the judgment and decree dated 14.02.2020 in RCSHM No.61/2018 whereby the decree of restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955 has been passed in favour of respondent/husband against the wife/appellant by Principal Judge, Family Court, Shajapur.

2. Facts in brief are that a marriage was solemnized on 01.05.2015 as per Hindu rituals including saptpadi in village [REDACTED], district Shajapur. At the time of marriage appellant/petitioner [REDACTED] has cleared 12th standard and she expressed her desire to continue studies. The parents and family members of in-laws agreed and gauna ceremony was solemnized on 16.07.2016 and elder brother of husband and relative viz. [REDACTED] took the petitioner to her matrimonial home only for a period of 2 days with an assurance that petitioner will return at her maternal home. After the function, petitioner requested to come back to maternal home. The members of her inlaws family intimated the petitioner that you cannot continue the study and you have to reside in the matrimonial home. It was also asked that very meager amount



of dowry has been given at the time of marriage and pressure was created to fulfill the demand of Rs.1 lakh in cash and one motorcycle and to fulfill the demand petitioner was harassed. The father of petitioner informed police station [REDACTED], district Shajapur and on the intervention of PS Akodiya, petitioner succeeded to return her maternal home on 28.07.2016. During her stay in matrimonial home for 2-3 days she was subjected to unnatural sexual intercourse, respondent/husband is in habit of drink and her life was put to danger. She was not taken to hospital. She is not willing to continue her marriage with the respondent/husband and filed a case under Protection of Women from Domestic Violence Act, 2005 and a petition for divorce on the ground of cruelty was filed on 21.11.2016.

3. The petition was contested by filing reply in which it was admitted that at the time of marriage petitioner was 12th class pass and she expressed her desire to continue the study and members of inlaws family were agreed and they cooperated the petitioner to continue the study and paid necessary expenses and petitioner is pursuing her B.Sc. course and respondent has assured that he will cooperate further study of petitioner/wife. He took the petitioner/wife for Devdarshan and picnic after gauna ceremony and during this period petitioner/wife was happy in the company of respondent/husband and returned to her maternal home. Her father



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received an amount of Rs.1 lakh from his elder brother [REDACTED] at the occasion of ring ceremony of petitioner's brother and thereafter petitioner's father received a further amount of Rs.1 lakh showing the urgency of marriage ceremony in the house. Jewellery worth Rs.1 lakh, 1kg. karaunda of silver, 1/2 kg. anklet of silver, a patti of 250 gm. of silver, mangal sutra made of gold, gold tops, long kundal jumki, 4 bangles of gold valued at Rs.1 lakh gifted at the time of marriage are with the petitioner/wife. Rupees 15,000/- was received by the father of wife at the time of gauna ceremony. He never demanded Rs.1 lakh and motorcycle. He never asked to stop further studies. He never committed domestic violence. Only to avoid return of jewellery and money, this petition on false pretext has been filed. A false case has been lodged against the husband.

4. The trial court framed total 4 issues and recorded evidence of petitioner/wife as PW/1, her father as PW/2 and admitted documents Ex.P/1 to P/6. Respondent/husband examined himself as DW/1 and Gyansingh as DW/2. No document in evidence was adduced by the respondent/husband.

5. After examination-in-chief of the husband as DW/1 on 28.08.2017 in RCSHM No.62/16 but before completing cross examination, husband filed a petition on 12.03.2018 under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights



with the averments as were stated in her reply to the petition of divorce with additional pleadings that wife has withdrawn herself with the company of husband without reasonable excuse and prayed for a decree of restitution of conjugal rights.

6. The petition for restitution of conjugal rights was replied with the same averments that were pleaded in the petition for divorce with additional pleadings that the petition for restitution of conjugal rights has been filed only to frustrate the purpose of filing the petition for divorce.

7. Trial court framed two issues and recorded the testimony of [REDACTED] as PW/1 and [REDACTED] as PW/2 in support of the petition for restitution of conjugal rights and recorded the evidence of wife as DW/1.

8. Appreciating the evidence, Principal Judge, Family Court recorded the findings in RCSHM No.62/16 that it is not proved that husband committed cruelty towards wife and it is also not proved that he committed unnatural sexual intercourse with the wife and recorded the finding it is the wife who herself does not desire to live with her husband and has filed the petition on false grounds and recorded the finding in RCSHM No.61/2018 that wife has withdrawn from the society of her husband without reasonable excuse and dismissed the petition filed by the wife seeking divorce and allowed



the petition of husband for restitution of conjugal rights.

9. Both the appeals have been filed by the wife on the ground that Principal Judge, Family Court, Shajapur committed error in appreciating the intention and behaviour of the husband towards decency of the petitioner/wife. Appellant/wife appreciated the fact that during the stay of wife with husband his conduct was causing mental cruelty towards wife as allowing third person to share the accommodation during trip is itself a mental cruelty. Trial court ignored the fact that there is no possibility of living together the petitioner and respondent as husband and wife in future.

10. Heard.

11. Counsel for the respondent in both the cases has supported the judgment and decree of the trial court and contended that he should be given an opportunity to save his family life.

12. Perused the record.

13. Proceedings of the trial court disclose that parties were referred to mediation but the mediation was unsuccessful. This court also referred the parties to mediation but before this court also the mediation was unsuccessful.

14. Now before re-appreciating the evidence this court is referring the principle applicable for determining whether the



conduct complained of amounts to cruelty. Unlike the case of physical cruelty mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. Feeling of anguish, disappointment and frustration in one spouse caused by the conduct of other can only be appreciated on assessing the attending facts and circumstances as held in **Praveen Mehta vs. Inderjit Mehta - AIR 2002 SC 2562**.

15. It has to be borne in mind that in section 13(1)(ia) of the Hindu Marriage Act, 1955, legislature has used the word treated the petitioner with cruelty and the word "has treated" denotes a conscious action on the part of the respondents where the act of cruelty is established. It is not necessary to establish that the respondent had the requisite intention to commit the act. The relevant part of **Shoba Rani vs. Madhukar Reddy - 1988 (1) HLR 169** is being reproduced as below:

"The context and the set up in which the word 'cruelty' has been used in the section seems to us, that intention is not a necessary element in cruelty.... If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, the relief to the party cannot



be denied on the ground that there has been no deliberated or wilful ill-treatment."

16. Now this court is re-appreciating the evidence available on record of Family Court. Para-12 of [REDACTED] (PW/1) discloses that respondent/husband is uneducated (merely he puts his name as signature) and at the time of marriage, petitioner/wife has cleared her 12th standard examination and she was desirous to pursue her studies further and she continued her graduation but respondent/husband (DW/1) had admitted in para-12 of his statement that he did not bear the expenses of her studies. It has been admitted that a matter of domestic violence was filed before the court of Shajapur. This witness has admitted the fact that when for the first time petitioner/wife came to her matrimonial home then on the next day respondent/husband took the wife on the pretext of picnic and also took his relative [REDACTED] with him for 2-3 days without maintaining the privacy of the wife and where wife alleged unwelcoming behaviour of the husband. It is admitted by [REDACTED] (PW/2) also that when petitioner/wife was brought to the matrimonial home after gauna ceremony then she was pursuing her studies and admission of [REDACTED] (DW/1) that he did not bear the expenses of her studies supports the statement of petitioner/wife that she was compelled to discontinue her studies in matrimonial home.



17. John Dewey, an American philosopher, psychologist and educational reformer said that education is not just about preparing for life, but it is life itself.

18. The Apex Court in the case of **Mohini Jain vs. State of Karnataka & others - AIR 1992 SC 1858** recognized that "education is a facet of life" and is considered an integral part of "right to life" under Article 21 of the Constitution of India, meaning that access to education is essential for living a life with dignity.

19. The Hon'ble Supreme Court, in para 4 of [Sobha Rani Vs. Madhukar Reddi](#) as reported in AIR 1988 SC 121, has observed as under:

"The word 'cruelty' has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live



with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

20. The Hon'ble Apex Court in para 5 of [Shobha Rani](#) case (supra) has further observed as under:

"It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. They may not go in parallel with them. There may be a generation gap between them and the parties. It would be better if they keep aside their customs and manners. It would be also better if they less depend upon precedents. Each case may be different.



They deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty.

21. It is also a fact that during the period of 10 years from the solemnization of marriage on 01.05.2015 petitioner and respondent were together only for a period of 3 days in the month of July, 2016 and that experience of the wife was a nightmare and thereafter they never came in the company of each other.

22. Compelling the wife to discontinue her studies or creating such an atmosphere that she is put in a position not to continue her studies is equivalent to destroy her dreams in the beginning of their marital life and forcing her to live with a person who is neither educated nor eager to improve himself certainly amounts to mental cruelty and we hold that it constitutes a ground of divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955. Principal Judge, Family Court, Shajapur recorded the finding regarding issues no.1 & 2 ignoring this fact in RCS HM No.62/2016 and this is not a case where she was taking advantage of her own fault but this is a case



where wife was putting to sacrifice her dreams, career in the name of marital obligations. Accordingly, findings of the trial court on issues no.1 & 2 are set aside and it is found proved that respondent/husband treated the petitioner/wife with mental cruelty and treating the petitioner/wife with cruelty was a reasonable excuse to live separately from the husband and trial court committed error regarding issue no.1 in RCS HM No.61/2018 and it is found proved that appellant/wife has withdrawn the society of respondent/husband with reasonable excuse.

23. It is a case of irretrievable break down of marriage also as the appellant and the respondent are living separately since July, 2016 and there is no possibility of reunion of the parties, hence in the light of above, the orders of the Principal Judge, Family Court in RCS HM No.62/2016 & RCS HM No.61/2018 are liable to be set aside. Accordingly, both the appeals are allowed and the marriage solemnized on 01.05.2015 between the appellant and respondent is dissolved on the ground mentioned in section 13(1) (ia) of the Hindu Marriage Act, 1955 and the decree of restitution of conjugal rights in favour of the respondent/husband and against the appellant is set aside.

24. In the result, both the appeals are allowed.



**(VIVEK RUSIA)
JUDGE**

**(GAJENDRA SINGH)
JUDGE**

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